

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

ME2 Productions, Inc.,

Case No: 2:17-cv-759

Plaintiff,

Judge Graham

v.

Magistrate Judge Deavers

Joe Wall,

Defendant.

Order Adopting Report and Recommendation

On March 8, 2018, the Magistrate Judge issued a Report and Recommendation with Certified Facts, see 28 U.S.C. § 636(e)(6)(B), regarding the failure of plaintiff's counsel, Timothy A. Shimko, to comply with a court order to appear in person for a preliminary pretrial conference. The Magistrate Judge found that Mr. Shimko had not shown any basis to excuse his failure and that he had acted in misleading fashion in attempting to avoid his obligation to appear and in trying to shift blame for his conduct. The Magistrate Judge recommended that Mr. Shimko and plaintiff be found in civil contempt and that plaintiff be ordered to pay the reasonable expenses incurred by defendant, appearing *pro se*, to attend the preliminary pretrial conference.

No objections have been filed to the Report and Recommendation. Upon review of the Certified Facts and the record, the court hereby adopts the Magistrate Judge's Report and Recommendation. The Certified Facts establish by clear and convincing evidence that Mr. Shimko "violated a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order." Liberte Capital Group, LLC v. Capwill, 462 F.3d 543, 550 (6th Cir. 2006) (quoting Glover v. Johnson, 934 F.2d 703, 707 (6th Cir. 1991)). Further, the recommended sanction serves the civil contempt power's remedial purpose of coercing a party or individual to perform an act or to compensate the injured party. See United States v. Bayshore Associates, Inc., 934 F.2d 1391, 1400 (6th Cir. 1991).

Accordingly, Timothy A. Shimko and plaintiff ME2 Productions, Inc. is FOUND TO BE IN CIVIL CONTEMPT. Plaintiff is ORDERED TO PAY defendant's reasonable expenses incurred in his attending and participating in the January 9, 2018 preliminary pretrial conference.

Defendant is ordered to submit by May 15, 2018 an affidavit setting forth his reasonable expenses, including lost wages and incidental expenses such as parking fees, incurred in connection with his attending and participating in the preliminary pretrial conference.

Once defendant's affidavit is filed on the docket by the Clerk of Court, plaintiff shall have thirty days to either: (1) contest the reasonableness of the submitted expenses, or (2) pay the expenses in full and submit to the court proof of plaintiff's satisfaction of the contempt sanction.

The Clerk is directed to send a copy of this Order to defendant Joe Wall, 1266 Weybridge Rd., Columbus, Ohio 43220.

s/ James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: April 5, 2018